SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 27

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

ILLINOIS LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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1 Before United States Board of Tax Appeals

Docket No. 67201

ILLINOIS LIFE INSURANCE COMPANY, A CORPORATION, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances:

For Taxpayer: Ray O. West, Esq., Wm. M. Klein, Esq., Samuel B. Kraus, Esq.

For Comm'r.: L. W. Creason, Esq.

Docket entries

1932

Jul. 30—Petition received and filed. Taxpayer notified. (Fee paid.)

Jul. 30—Copy of petition served on general counsel.

Sep. 26—Answer filed by general counsel.

Sep. 29—Copy of answer served on taxpayer. General Calendar.

1933

Oct. 17—Hearing set Nov. 16, 1933.

Oct. 25—Motion to amend answer, amendment tendered, filed by general counsel. 10/27/33 granted.

Nov. 16—Notice of appearance of Roy O. West, Wm. M. Klein, and Samuel Kraus, as counsel for taxpayer filed.

Nov. 16—Hearing had before Mr. Smith, Div. 5. Submitted—stipulation of facts read into record—petitioner's brief due Dec. 15, 1933—Commissioner's brief argued at hearing.

Nov. 21—Transcript of hearing of Nov. 16, 1933 filed.

Dec. 16—Order extending time to Jan. 15, 1934 to file brief and also stipulation of facts entered.

1934

Jan. 13—Motion for leave to introduce additional evidence into the record filed by taxpayer.

Jan. 13—Objections to granting of petitioner's motion filed by general counsel.

Jan. 13—Brief and argument filed by taxpayer.

Jan. 16—Motion for leave to file additional evidence denied.

2 Jul. 12—Opinion rendered, Mr. Smith. Judgment will be entered under Rule 50.

Aug. 7—Notice of settlement filed by general counsel.

Aug. 10—Hearing set August 29, 1934 on settlement.

Aug. 29—Hearing had before Mr. Smith, Div. 5 on settlement under Rule 50. Not contested—referred to Mr. Smith.

Aug. 30—Decision entered, Mr. Smith, Div. 5.

Sep. 5—Order amending decision of August 30, 1934 entered.

Nov. 7—Petition for review by U. S. Circuit Court of Appeals (7) with assignments of error filed by general counsel.

Nov. 20—Proof of service filed by general counsel.

1934.
Dec. 29—Motion for extension to Feb. 15, 1935 to complete and transmit record filed by general counsel.
Dec. 29—Order enlarging time to Feb. 15, 1934 to complete record entered.

1935
Feb. 1—Statement of evidence lodged.
Feb. 14—Motion for extension to March 13, 1935 to complete and transmit record filed by General counsel.
Feb. 14—Order enlarging time to March 13, 1935 for preparation of evidence and delivery of record entered.
Feb. 14—Notice of lodgment of statement and of hearing on Feb. 13, 1935 to approve statement filed.
Feb. 14—Praecipe with proof of service thereon filed.
Feb. 15—Notice of hearing date changed to February 20, 1935.
Feb. 20—Hearing had before Mr. Black, Div. 15 on approval of statement of evidence—not contested—referred to Mr. Smith for approval.
Feb. 20—Statement of evidence approved and ordered filed.

3 Before United States Board of Tax Appeals

[Title omitted.]

Petition

Filed July 30, 1932

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IT:AR:D-6 SHR-60D, dated June 2nd, 1932, and as a basis of its proceeding alleges as follows:

1. The petitioner is an Illinois corporation with its principal and Home Office at 1212 Lake Shore Drive, Chicago, Illinois.

2. The notice of deficiency, a copy of which is attached and marked "Exhibit A", was mailed to the petitioner on June 2nd, 1932.

3. The taxes in controversy are income taxes for the calendar year 1929 and for Eleven Hundred Fifteen Dollars and Twenty-five Cents ($1,115.25).

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in refusing to allow to the petitioner the full amount of depreciation claimed in its return for the taxable year in question and allowed to it by law.

(b) The Commissioner of Internal Revenue erred in refusing to allow to petitioner a depreciation allowance for the year in question, which was claimed in its return, to the same extent and identical with that allowed to other corporations not engaged in the business of life insurance, which action of the Commissioner was illegal and in violation of, and contrary to, the law under which the income tax for the

year in question was imposed and the Treasury Regulations promulgated in relation thereto.

(c) The Commissioner of Internal Revenue erred in the de-
4 termination of the deficiency in question as such determination of a deficiency under the facts of this case is without authority under the law for the year in question.

(d) The Commissioner of Internal Revenue erred in the determination of such deficiency, and is attempting to impose and levy a tax upon the petitioner which is not authorized by law.

(e) The Commissioner of Internal Revenue erred in determining the deficiency in question and is attempting to levy a greater tax upon the petitioner by reason of the fact that the petitioner possesses some income which is tax free.

(f) The Commissioner of Internal Revenue erred in limiting petitioner's depreciation allowance to 28% of the amount claimed, and in not allowing the full amount claimed by petitioner in its return.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The petitioner is a corporation organized under the laws of Illinois, having its Home and principal office in the City of Chicago, County of Cook and State of Illinois, and is engaged in the business of issuing and writing life insurance policies on the lives of natural persons.

(b) For the taxable year in question, the petitioner sought to deduct depreciation in its return on property used in its trade and business, the following amounts on the property hereinafter described in this paragraph, viz:

Furniture & fixtures	$6,975.31
Medical information cards	5,116.43
Law books	360.46
Total	$12,452.20

(c) The respondent here subsequently allowed the depreciation claimed on law books.

(d) The respondent here refused to allow any of the depreciation claimed on medical information cards on the ground that the same were an underwriting expense pertaining solely to the production of premium income.

(e) The respondent here refused to allow the depreciation claimed by the petitioner in its return on furniture and fixtures in the amount of Six Thousand Nine Hundred Seventy-five Dollars and Thirty-one Cents ($6,975.31), and reduced the claim of petitioner in this regard to One Thousand Nine Hundred Fifty-three Dollars and Nine Cents ($1,953.09), or 28% of the amount claimed

(f) The total premium income of petitioner for the year in
5 question was Four Million Nine Hundred Seventy-five Thousand One Hundred Sixty-two Dollars and Ninety Cents ($4,975,162.90) and an investment income of One Million Nine Hundred Thirty-four Thousand Six Hundred Seventy-six Dollars and

Twenty-five Cents ($1,934,676.25), or a total income of Six Million Nine Hundred Nine Thousand Eight Hundred Thirty-nine Dollars and Fifteen Cents ($6,909,839.15).

(g) The respondent here refused to allow any depreciation on medical information cards claiming the same pertained merely to underwriting income and has limited the depreciation on furniture and fixtures to the same proportion of the amount claimed, that the investment income of petitioner for the year in question bore to the total gross income including premiums for the year in question.

(h) There is no dispute as to the rates used in computing the depreciation on such property.

Wherefore, the petitioner prays that this Board may hear the proceeding and determine that there is no deficiency in the tax of the petitioner, and that said petitioner be allowed to take its full deduction for depreciation as allowed to it by law and as claimed by it in its return for the taxable year in question, and your petitioner will ever pray.

ILLINOIS LIFE INSURANCE COMPANY, A CORP.,
By RAYMOND W. STEVENS,
President.
Address: 1212 Lake Shore Drive, Chicago, Illinois.

[*Duly sworn by Raymond W. Stevens, jurat omitted in printing.*]

6 *Exhibit A to petition*

NP–2–28
JUN—2, 1932.

IT:AR:D–6
SHR–60D
ILLINOIS LIFE INSURANCE COMPANY,
1212 Lake Shore Drive, Chicago, Illinois.

SIRS: You are advised that the determination of your tax liability for the year 1929 discloses a deficiency of $1,115.25, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, If You Do Not Desire to Petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P–7. The signing of this agreement will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier;

Whereas If No Agreement Is Filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNETT,
Commissioner.
By (Signed) J. O. WILMER,
Deputy Commissioner.

Enclosures:
Statement
Form 882
Form 870
Schedules 1 and 2.
mrh–3

7. *Statement*

IT:AR:D–6
SHR–60D

In re: Illinois Life Insurance Company, 1212 Lake Shore Drive, Chicago, Illinois

Tax liability

Year	Tax liability	Tax assessed	Deficiency
1929	$33,450.31	$32,335.06	$1,115.25

Consent expiring December 31, 1932, except as extended by the provisions of section 277 of the Revenue Act of 1928, is on file in this office for the year 1929.

The arguments advanced at the conference held in this office with your representatives under date of May 12, 1932, with respect to depreciation on furniture, fixtures, law books, and medical information cards, have been given further consideration and in accordance with the present policy of the Bureau your contentions with the exception of depreciation on law books, cannot be allowed.

Depreciation on furniture and fixtures is held to be allowable in accordance with section 203 (a) (7) of the Revenue Act of 1928, to the extent that it is related to the earning of investment income. Since only a proportionate part of the depreciation on these assets is chargeable against investment income, this office is allowing depreciation based on the percentage which the investment income reported bears to the total gross income. Furthermore since life insurance companies are not taxed on their premium income, depreciation on furniture and fixtures is limited to the amount sustained in the earning of investment income. Adjustment of depreciation is shown in detail in schedule 1–A made a part of this letter.

With respect to the medical information cards there appears to be no reason why your company should be permitted to deduct depreciation or obsolescence upon these cards for the reason that the cards

have no connection whatever with investment income or interest, dividends and rents. The depreciation is purely an underwriting expense in connection with the investment department of your company. No depreciation is therefore considered allowable on these cards.

8 Since you have stated that the law books are used extensively in connection with foreclosure on mortgages in various states, the depreciation of the books is considered chargeable to investment income and has accordingly been allowed as a deduction.

A copy of this letter has been furnished Mr. Glenn Thompson in accordance with the authorization contained in power of attorney on file in this office.

Recomputation of the tax is shown in detail in the following schedules.

Illinois Life Insurance Company. Year ended December 31, 1929.

Schedule 1

Adjustments to net income

Net income as disclosed by return		$293,955.12
As corrected		304,093.77
Adjustment as computed below		10,138.65
Unallowable deduction and additional income:		
(a) Excessive depreciation	$10,138.65	
Net adjustment as above		10,138.65

Schedule 1-A

Explanation of items changed

(a) See statement made a part of this letter. The portion of depreciation allowable from an examination of your annual statement is approximately 28% determined as follows:

Particulars	Amount	Ratio
Total premium income (item 20, page 2, annual statement)	$4,975,162.90	72%
Investment income (item 35, annual statement)	1,934,676.25	28%
Total income, all departments	6,909,839.15	100%

The allowance of depreciation on furniture and fixtures is accordingly limited to 28% of $6,975.31 or $1,953.09.

9 Depreciation was deducted in your return as follows:

Item		*Amount*
Furniture and fixtures		$6,975.31
Medical information cards		5,116.43
Law books		360.46
Total claimed		$12,452.20
Depreciation allowable:		
Furniture and fixtures	$1,953.09	
Law books	360.46	2,313.55
Depreciation disallowed		$10,138.65

Schedule 2

Computation of tax

Net income for taxable year	$304,093.77
Income tax 11%	33,450.31
Tax previously assessed	32,335.06
Additional tax to be assessed	1,115.25

mrh-3

Before United States Board of Tax Appeals

Answer

Filed Sep. 26, 1932

Now comes the Commissioner of Internal Revenue, the respondent herein, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and for answer to the petition heretofore filed in this appear, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4 (a) to (f), inclusive. Denies that the respondent committed the errors or any of the errors alleged in subparagraphs (a) to (f), inclusive, of paragraph 4 of the petition.

5 (a) (b) and (c). Admits the allegations contained in subparagraphs (a) (b) and (c) of paragraph 5 of the petition.

5 (d). Admits that the respondent here refused to allow any of the depreciation claimed on medical information cards. Denies the remaining allegations contained in subparagraph (d) of paragraph 5 of the petition.

5 (e) and (f). Admits the allegations contained in subparagraphs (e) and (f) of paragraph 5 of the petition.

5 (g). Admits that the respondent here refused to allow any depreciation on medical information cards. Admits that the respondent has limited the depreciation on furniture and fixtures to the same proportion of the amount claimed that the investment income of petitioner for the year in question bore to the total gross income including premiums for the year in question. Denies the remaining allegations contained in subparagraph (g) of paragraph 5 of the petition.

5 (h). Admits the allegations contained in subparagraph (h) of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified, or denied.

Wherefore it is prayed that the petition be denied.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of Counsel:
L. W. CREASON,
Special Attorney,
Bureau of Internal Revenue.

11 Before United States Board of Tax Appeals

Amendment to answer

Filed Oct. 25, 1933

Now comes the Commissioner of Internal Revenue, the respondent herein, by his attorney E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue, and amends his answer heretofore filed in this proceeding by adding thereto the following:

Assignments of Error

4. (g) The Commissioner committed error in not disallowing as deductions from gross income of the petitioner for 1929 the amounts of, to-wit, $131,834.86 and $1,920.85, being respectively 4 per cent of the mean of so-called "survivorship investment funds" and "additional liability on S. I. policies" for the reason that neither the so-called survivorship investment funds nor the additional liability on S. I. policies was a reserve fund required by law within the meaning of Section 203 (a) (2) of the Revenue Act of 1928.

4. (h) The Commissioner erred in not disallowing as a deduction from gross income discount on premiums in the amount of, to-wit, $1,241.91.

Facts in Support of Respondent's Assignments of Error

5. (i) The respondent alleges on information and belief that the petitioner's liability to policyholders on account of its so-called "survivorship investment funds" on December 31, 1928, was $3,249,580.06; that it was $3,342,162.91 on December 31, 1929; that the mean of said survivorship fund during the calendar year 1929 was $3,295,871.49; that 4 per cent of said mean was $131,834.86; that the petitioner's liability on account of its so-called "additional liability on S. I. policies contingent on payment of deferred and uncollected premiums" on December 31, 1928 was $48,707.53; that it was $47,334.82 on December 31, 1929; that the mean of said additional liability on
12 said S. I. policies during the calendar year 1929 was $48,021.18; that 4 per cent of said mean was $1,920.85.

Said amounts of $131,834.86 and $1,920.85 were included in the amount of $1,276,576.57 as a deduction by the petitioner on page 1, line 11 of its income tax return for the calendar year 1929 in determining the amount reported thereon as net income. In determining the deficiency proposed in the sixty-day deficiency notice upon which the petition herein is based, the Commissioner did not disallow said amounts as deductions.

5. (j) Respondent further alleges that the petitioner included as a deduction on its income tax return for the year 1929, page 1, line 13, as "interest on indebtedness" certain discounts on premiums in the amount of, to-wit, $1,241.91, and that in determining the deficiency proposed in the sixty-day deficiency notice here involved, the Commissioner did not disallow said amount as a deduction.

Wherefore, it is prayed that the petition be denied and that the net income of this petitioner for the year 1929 as set forth in the sixty-day deficiency notice upon which the petition herein is based be increased by the amounts of, to-wit, $131,834.86, $1,920.85, and $1,241.91, and that the deficiency for that year be recomputed and redetermined accordingly.

E. Barrett Prettyman,
(Signed) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue.

Of Counsel:
L. W. CREASON,
Special Attorney,
Bureau of Internal Revenue.

In United States Circuit Court of Appeals

Statement of evidence

Lodged Feb. 1, 1935. Filed Feb. 20, 1935

The following is a statement of all the evidence material to the assignments of error in the petition for review filed with reference to the above-entitled cause, which came on for hearing before the Honorable Charles P. Smith, member of the United States Board of Tax Appeals, on November 16, 1933. The taxpayer was represented by Samuel B. Kraus, Esq. The Commissioner was represented by E. Barrett Prettyman, Esq., General Counsel, and L. W. Creason, Esq., Special Attorney, Bureau of Internal Revenue.

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Statement of facts

All the facts relative to the questions raised in the assignments of error were stipulated at the hearing. These facts are shown in transcript of proceedings as follows:

"The petitioner is a corporation organized under the laws of Illinois having its home and principal office in the City of Chicago,

County of Cook, State of Illinois, and was during the calendar year 1929 and prior thereto engaged in the business of issuing and writing life insurance policies on the lives of natural persons.

"During and prior to the calendar year 1929 the petitioner issued certain so-called survivorship investment policies, a specimen copy of which is marked Exhibit 'A' and made a part hereof."

At this point there was received in evidence as Respondent's Exhibit A, a specimen copy of the insurance policy involving a survivorship investment policy, a copy of which is attached hereto and made a part hereof.

"Petitioner's liabilities pursuant to the agreements contained in and peculiar to said survivorship investment policies as at December 31, 1928, and as at December 31, 1929, were as follows:

	December 31, 1928	December 31, 1929
Survivorship investment funds	$3,249,580.06	$3,342,162.91
Additional liability on S. I. policies contingent on payment of deferred and uncollected premiums	48,707.53	47,334.82
Totals	3,298,287.59	3,389,497.73

"The form of the agreements referred to herein is set forth in sections headed 'Survivorship Investment Fund' and 'Optional Settlements at the End of Twenty Years.' Page 2 of Exhibit A."

Four percent of the mean of said amounts of $3,298,287.59 and $3,389,497.73, namely, $133,755.71, was included by the petitioner on its income tax return for the calendar year 1929
14 as a deduction from gross income in arriving at the amount reported taxable thereon as taxable net income. In determining the deficiency proposed in the sixty day deficiency notice, upon which the petition herein is based, the Commissioner did not disallow said amount of $133,755.71 as a deduction.

Mr. Kraus, counsel for the taxpayer, then directed the attention of the Honorable Member of the Board of Tax Appeals presiding, to the fact that the petition as originally filed related only to the deficiency first asserted by the Commissioner in the amount of $1,115.25, but the original answer to the petition was amended asserting and claiming a revised deficiency as shown thereby.

Certificate to statement of evidence

The foregoing is all of the material evidence adduced at the hearing before the Board of Tax Appeals which is material to the determination of the questions presented in the assignments of error in the petition for review, and contains all of the evidence relating to the question presented by such assignments of error adduced at

the hearing and not covered by the Board's findings of fact and the same is approved by the undersigned.

(Signed) ROBERT H. JACKSON,
Robert H. Jackson,
Assistant General Counsel for the Bureau of Internal Revenue.

Approved:

_____

Attorney for Respondent on Review.

Approved February 20, 1935:
(Sgd.) CHARLES P. SMITH,
Member, United States Board of Tax Apppeals.

Joint Exhibit A

20 Payment Life—Survivorship Investment Policy Premium payable for 20 years—Non-Participating

Amount $10,000.00. Number Specimen.

ILLINOIS LIFE INSURANCE COMPANY

Agrees to Pay Ten Thousand Dollars to Martha Priscilla Brown Wife of the Insured, or to such other beneficiary as may have been duly designated, at the Head Office of the Company, in Chicago, Illinois, immediately upon receipt of due proofs of the death of Richard Gordon Brown the Insured, of Chicago, County of Cook, State of Illinois, and of the interest of the claimant, provided that all premiums to the time of death have been duly paid.

Yearly Optional Benefits

All premiums hereon having been paid in full in cash, and this policy being free from indebtedness, the Insured, upon application made to the Head Office of the Company, on the second anniversary of its date of issue, or upon the date upon which any subsequent annual, semi-annual or quarterly premium may become due, or within thirty-one days thereafter, will be entitled to one of the following options, the respective values or extensions thereof being shown in the Tables of Values on the fourth page hereof, which said tables, with the explanation, illustration and statements prefatory thereto are a part of this policy:

First Option—Cash; to be paid upon surrender and cancellation of this policy.

Second Option—Paid-Up Insurance; to be evidenced by appropriate endorsement hereon, signed by the President or Secretary.

Third Option—Extended Insurance; which, if requested by the Insured, will be evidenced by appropriate endorsement hereon, signed by the President or Secretary.

One Month's Grace Without Interest

A grace of one month (not less than thirty days) from the due date of any premium, during which period of grace the insurance shall remain in force, will be allowed in the payment of premiums hereon during the second and subsequent policy years without interest. In case of the death of the Insured during said month, the unpaid premium shall be deducted from the proceeds hereof.

Policy Automatically Continued

Should the Insured fail to pay any premium hereon, after premiums for two years have been paid, without having exercised any one of the several options set forth on the first page hereof, the Company will, without any action on the part of the Insured, grant the Third Option (Extended Insurance) mentioned on the first page hereof.

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Reinstatement

The Company will revive and reinstate this policy at any time within five years of the date of default upon being furnished with evidence satisfactory to it of the then insurability of the Insured and payment of arrears of premiums and payment or reinstatement of any other indebtedness on this policy, with interest at the rate of five per cent per annum.

Cash Loans

The Company will make loans, charging interest in advance at six per cent per annum, on the sole security of this policy, if there has been no default in payment of premium. The loan may be for any amount which shall not exceed the Cash or Loan Value as indicated in the Tables of Values on the fourth page hereof; there is no loan value prior to the policy years for which values are shown in said Tables of Values. The Company may require a thirty days' previous notice at its Head Office before making any loan. A loan note and agreement satisfactory to the Company shall be executed and sent with the policy to the Company at its Head Office. Any indebtedness on or secured by this policy, together with any unpaid balance of the premium for, and interest in advance on the loan to the end of, the policy year in which the loan is made, shall be paid out of such loan. The whole or any part of the loan may be repaid at any time. Failure to pay any such loan, or to pay renewal interest thereon, shall not void this policy unless the total indebtedness on said policy shall equal or exceed the amount of loan available at

the time of such failure; nor until one month after notice that the policy will be liable to such forfeiture shall have been mailed by the Company to the last known address of the Insured and of any Assignee of record at the Head Office of the Company. In computing said "total indebtedness" interest if not paid when due shall be added to the principal of such loan and shall bear interest at the rate of six per cent per annum.

Suicide

Death by the Insured's own hand or act, whether sane or insane, within two years from the date hereof, is a risk not assumed by the Company, and in event of death as aforesaid, the liability of the insurer hereunder shall be limited to an amount equal to the premiums actually paid hereon.

Aviation

Death within two years from the date hereof, caused directly or indirectly by engaging in any aeronautical ascension
17 or activity, either as a passenger or otherwise, or occurring while so engaged (otherwise than in Military or Naval Service in time of war, concerning which service special conditions are made herein), is a risk not assumed by the Company, and, in the event of such death, the liability of the Company shall be limited to an amount equal to the actual premiums paid hereon.

Military or Naval Service in Time of War

Military Service, within continental United States, not involving Aeronautics, shall not affect the Company's liability under this policy, except as to such Double Indemnity and Disability Benefits, if any, as may be granted in connection with this policy.

In time of war the Insured shall not engage in or take part in any Military Service outside of continental United States, and shall not either within or without continental United States, engage in or take part in any Naval Service, nor any Aeronautic Service in connection with either Military or Naval Service. If the Insured shall die from any cause after engaging in or taking part in such prohibited service and prior to his discharge from such service or shall die within six months after such discharge, as a result, direct or indirect, of any disease or ailment contracted or injured incurred after engaging or taking part in such service and prior to discharge therefrom, the liability of the Company shall, in either event, be limited to the legal reserve hereon (American Experience 3½% basis) together with 10% of the amount which would have been payable (exclusive of benefits under Double Indemnity provisions, if any) if the Insured had not engaged in or taken part in such service; provided that the liability shall in no case exceed the amount for which the

Company would have been liable if the Insured had not engaged in or taken part in such service.

The boundaries of "continental United States" as used in this policy shall include the waters within three miles of the continental line but shall not include the Panama Canal Zone.

Travel; Residence

Travel or residence by the Insured in time of war outside of continental United States and the Dominion of Canada within a period of two years from the date hereof shall operate forthwith to limit the liability of the Company, in event of the death of the Insured thereafter occurring and within two years from the date
18 hereof, to a sum equal to the legal reserve (American Experience 3½% basis) on this policy together with 10 per cent of the face value of this policy less any indebtedness thereon. The Company will, however, issue a Permit for such travel or residence (but not granting Double Indemnity or Disability Benefits in the case of policies in which provision is made for any such benefit), upon payment of the required extra premium at its Head Office prior to the departure of the Insured from continental United States or Canada (but no Permit shall be issued which will make the total liability of the Company on any one life exceed five thousand dollars [$5,000] together with the legal reserve calculated as hereinbefore stipulated on any insurance in excess of said sum). Any Permit issued will be for a limited period and renewable only upon payment of the extra premium required for such renewal at the time thereof.

Change of Beneficiary

The Insured may, without expense, at any time, and from time to time, during the continuance of this policy, provided it is not then assigned, change the beneficiary, or beneficiaries, by written notice to the Company, at its Head Office, accompanied by this policy, such change to take effect only upon endorsement of the same on the policy by the Company. If no beneficiary or beneficaries hereunder according to the most recent appointment of the Insured shall be living at the death of the Insured; the amount then insured by this policy shall be paid to the estate of the Insured.

Premiums, Where and How Payable

All premiums hereon are due and payable in advance at the Head Office of the Company in Chicago, Illinois, but may be paid to duly authorized collectors of the Company, in advance, in exchange for the Company's official receipt, signed by the President or Secretary, and countersigned by the collector. A premium other than an annual will be accepted according to the Table of Payments endorsed hereon and made a part hereof; provided that the receipt of any such pre-

mium, less than a full annual, shall not have the effect to continue this policy in force longer than three months in case of a quarterly premium, or six months in case of a semi-annual premium. Notice of every premium that may become due or payable hereunder is given and accepted by the delivery and acceptance of this policy, and any further notice is expressly waived by the Insured. Failure to pay any premium when due shall, except as herein otherwise provided, void this policy and forfeit all premiums paid hereon to the Company, and terminate and forfeit the Insured's right to pay any further premiums hereunder.

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Instalment Option

The Insured may at any time, provided this policy is not then assigned, change the manner of payment of the insurance hereunder from one payment to payment in Limited Annual Instalments or in Continuous Annual Instalments in accordance with and subject to the provisions headed "Instalment Benefits" and the appropriate table thereunder. Such change will take effect upon endorsement of the same on the policy by the Company.

Survivorship Investment Fund

The company guarantees that it will set aside, from each full year's premium paid to the Company after the first and to and including the twentieth, on account of this policy, the amount set forth as the Annual Contribution at the bottom of the Table of Payments on the fourth page hereof. The amounts so set aside shall be placed in a fund to be known as "The Survivorship Investment Fund", applicable to policies on the Survivorship Investment Plan issued in the same calendar year as this policy. The Company agrees that no deductions shall be made from said fund for any purpose whatsoever but that all contributions to said fund shall be accumulated at the rate of three and one-half per cent per annum, compound interest from the dates of the respective payments. The Company further agrees to apportion to this policy, as a Survivorship Investment, provided the Insured hereunder shall survive to the twentieth anniversary of the date hereof and that all premiums hereon have been paid, and not otherwise, a sum bearing the same proportion to the total amount of said fund as the total contributions thereto from premiums paid on this policy bear to the aggregate total contributions thereto from premiums paid on all policies in the Survivorship Investment Class issued in the same calendar year as this policy and that are in force at the end of twenty years from their respective dates of issue, and on which all premiums have been duly paid. For the purpose of this provision a premium waived under Disability Provisions shall be held and construed as a premium paid.

The Company will furnish the Insured hereunder, upon his written request after this policy shall have been in force more
20 than three years, a statement of the amount of this policy's proportionate share of the Survivorship Investment Fund then accumulated and held awaiting apportionment, without deduction, at the expiration of the Survivorship Investment Period.

Optional Settlements at the End of Twenty Years

A. The Insured may continue this policy as a Fully Paid-up policy, no further payment of premiums being required, and receive in addition thereto:

1. A cash payment of the Survivorship Investment hereto apportioned; or

2. A Fully Paid-up Non-Participating Life Policy, subject to satisfactory evidence of insurability, for such amount as will be purchased by the Survivorship Investment hereto apportioned, at the Company's then published single premium rate applicable at the then attained age of the insured; or

B. The Insured may surrender this policy and receive:

3. A cash payment of the Entire Cash Value, namely: the Guaranteed Cash Surrender Value of $6,100.00, and in addition thereto the Survivorship Investment hereto apportioned.

Note.—At the expiration of the Survivorship Investment Period, a statement will be rendered the Insured, setting forth the values of the above settlements. If the Insured fails to exercise his option to elect one of the aforesaid settlements, and to notify the Company thereof in writing at its Head Office within three months from the end of the Survivorship Investment Period, it is agreed that Settlement No. 1 shall automatically apply.

(In right-hand margin:) See copy of Application herewith and if errors or omissions are found therein, note the same and return the policy to "Illinois Life Insurance Company, Chicago, Ill.", for correction.

General Provisions

(1) This policy and the application therefor, a copy of which is hereto attached, taken together, constitute the entire contract, which cannot be varied, except by the President or Secretary of the Company, in writing, and no condition, privilege, provision, or modification of this contract endorsed hereon, or attached hereto, shall control or be binding upon the Company, or in any manner regarded as a part of this contract, unless the same bears the signature (or facsimile thereof) of the President or Secretary
21 and is countersigned by the Recorder or Assistant Recorder. (2) All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall avoid this policy unless it is contained in the written application, copy of which is attached hereto. (3) If

the age of the Insured is misstated, the amount payable under this policy shall be such as the actual premium paid would have purchased at the correct age of the Insured, and all benefits under this policy, including the term of Extended Insurance, as set forth in the Tables of Values shall be modified to correspond to the correct amount of this policy and to the correct age of the Insured, in accordance with the Company's published tables of rates and values in use at the date of the issue hereof. (4) Upon the maturity of this policy by the death of the Insured, any unpaid balance of the annual premium for the current insurance year, together with any and all other indebtedness hereon, or secured hereby, shall be a first lien on this policy, and will be deducted and set off against any amount becoming due hereon. (5) The Tables of Values on the fourth page hereof apply only to policies free from indebtedness. On policies subject to indebtedness the benefits shown in said Tables of Values shall be reduced in the following manner: Any indebtedness, including any loan made on the security of this policy, shall first be deducted from the net reserve value of the benefit applied for (if application be duly made), or of the benefit automatically available (if application be not duly made), the respective benefits indicated by said tables being proportionately reduced in the case of Surrender for Cash or of Paid-up Insurance; in case of Extended Insurance the net reserve value reduced as aforesaid shall be applied as a net single premium on the American Experience 3½ per cent basis to purchase extended insurance for a sum equal to the face amount of the policy reduced by the amount of the indebtedness and interest. (6) The failure to pay any premium hereon when due, or the maturity of this policy by death or otherwise, shall render any loan hereon forthwith due and payable. (7) Any assignment of this policy must be made in duplicate and both copies sent to the Head Office, one to be retained by the Company and the other to be returned. The Company assumes no responsibility for the validity of any assignment. (8) No suit shall be brought or maintained to collect under this policy unless commenced within six years from the time the cause of action accrues. (9) This policy is not entitled to participate in the profits or surplus of the Company. (10) The
22 Insured may, without the consent of the beneficiary, receive every benefit, exercise every right and enjoy every privilege conferred upon the Insured by this policy, and enter into any agreement or contract with the Company respecting modification or termination of this policy. (11) The reserve on this policy shall be computed on the American Experience Table of Mortality with interest at 3½% per annum, according to the Illinois standard of valuation, except that after the 20th year, if premiums for 20 full years have been paid, the reserve shall be computed on the same Table of Mortality with interest at 3% per annum.

This policy shall be incontestable after it shall have been in force, during the lifetime of the Insured, for two years from its date,

except for non-payment of premiums, and subject to the provisions of the paragraph in this policy headed "Military or Naval Service in Time of War", and except as to provisions and conditions (if any) relating to benefits in event of total and permanent disability and those granting additional insurance specifically against death by accident.

This Agreement is Made in Consideration of the written and printed application therefor, which is hereby made a part hereof, and of the payment of the Premium on the dates and during the period set forth in the Schedule below. The first year's insurance under this policy is term insurance purchased by the whole or a part of the premium to be received during the first policy year.

Schedule

How Premium Is to Be Payable			Period During Which Premium Is Payable and Amount Thereof	
Annually	Day	Month	Period	Amount of Premium
in advance on the following dates of each year:	1	October	First Twenty Years.....	Three Hundred Seventy-nine and 90/100 Dollars.
			After Twenty Years.....	None.

In witness Whereof, the Illinois Life Insurance Company has caused this agreement to be signed by its President and Secretary, and countersigned by its Recorder or Assistant Recorder this first day of October One Thousand Nine Hundred and Thirty-one.

RAYMOND W. STEVENS,
(Signature deleted)
President.

BERT J. STOOKEY,
(Signature deleted)
Secretary.

——— ———, *Recorder.*

23 Specimen Copy Examined by

Instalment Benefits

The Insured may, at any time and from time to time, if the policy has not been assigned, and upon the terms and conditions hereinafter stated, change the mode of settlement of the proceeds of this policy from payment in one sum to payment in equivalent annual instalments, in accordance with the tables shown below, and thereafter may revoke such change (again making the proceeds payable in one sum), or may select some other of the modes of settlement designated below. The payment of the first instalment shall be made immediately upon receipt of due proofs of the death of the

Insured and of the interest of the claimant, and subsequent instalments shall be paid annually thereafter.

The commutation, in every case where permitted as above, or required as hereafter stated, shall be on the basis of three and one-half per cent interest, computed annually.

Each change in the mode of settlement, or revocation thereof, must be requested by the Insured in writing, and shall not take effect until endorsed on this policy by the Company at its Head Office.

The beneficiary shall not be permitted either to assign or commute any unpaid instalments, unless such right is given the beneficiary by the Insured, in writing, and is endorsed on this policy by the Company at its Head Office during the lifetime of the Insured.

Notwithstanding an Instalment Benefit shall have been granted hereunder, instalments shall be commuted and paid in a single sum in the cases hereinafter mentioned, to-wit:

(1) No instalments shall be paid hereunder if the same would be less than Forty Dollars ($40.00) each; but in any such case the Commuted Value of such instalments shall be paid in one sum at the maturity of the policy.

(2) Any part of the proce'ds of the policy payable to the executor, administrator, or assignee of the Insured shall be commuted and paid in one sum.

(3) If any beneficiary shall die after having received one or more instalments hereunder, the Commuted Value of the instalments then remaining unpaid shall be paid in one sum to the executors or administrators of the beneficiary.

24 The following tables are based upon a policy the proceeds of which, payable in a single sum, are One Thousand Dollars and will apply pro rata to this policy.

Table of Limited Annual Instalments

Annual Instalments limited to the number stated below; any number from two to twenty-five may be selected by the Insured.

Number of Instalments	25	*20	19	18	17	16	15	14	13	12
Amount of each Instalment	$58	$68	$70	$73	$76	$79	$83	$88	$93	$100
Number of Instalments	11	10	9	8	7	6	5	4	3	2
Amount of each Instalment	$107	$116	$127	$140	$157	$181	$214	$263	$344	$507

* Illustration.—If payment is to be made by twenty Annual Instalments, the amount of each Instalmen will be $68 for each $1,000 of proceeds.

Table of Continuous Annual Instalments

Annual Instalments to continue during entire lifetime of beneficiary, but Twenty-five Annual Instalments at least to be paid. (Pay-

ment by Continuous Instalments cannot be selected if there is more than one beneficiary under this policy.)

Age of Beneficiary at Death of Insured	15 or under	16	17	18	19	20	21	22	23	24
Amount of each Instalment	$43	$43	$43	$43	$44	$44	$44	$44	$45	$45
Age of Beneficiary at Death of Insured	25	26	27	28	29	30	31	32	33	34
Amount of each Instalment	$45	$45	$46	$46	$46	$47	$47	$47	$48	$48
Age of Beneficiary at Death of Insured	35	36	37	38	39	40	41	42	43	44
Amount of each Instalment	$49	$49	$49	$50	$50	$51	$51	$52	$52	$53
Age of Beneficiary at Death of Insured	45	46	47	48	49	*50	51	52	53	54
Amount of each Instalment	$53	$53	$54	$54	$55	$55	$55	$56	$56	$56
Age of Beneficiary at Death of Insured	55	56	57	58	59	60	61	62	63	64 or over
Amount of each Instalment	$57	$57	$57	$57	$58	$58	$58	$58	$58	$58

* Illustration.—If at the death of the Insured the beneficiary should be 50 years of age last birthday, the amount of each Annual Instalment will be $55.00 for each $1,000 of proceeds, and on a policy the proceeds of which were $10,000, the amount of each Annual Instalment would be $550.00, the payment of instalments to continue during the entire lifetime of the beneficiary; if, however, the beneficiary should die before twenty-five instalments shall have been paid, the remainder of said twenty-five instalments will be commuted and paid in one sum, as stated above.

25 Blank Spaces for Head Office Endorsements Only

No. Specimen
Amount $10,000.00
Richard Gordon Brown
Illinois Life
Insurance Company
Head Office, Chicago, Illinois
20 Payment Life
Survivorship Investment Policy
Premiums Payable for 20 Years
Non-Participating

Premiums on this Policy may be paid annually, semi-annually, or quarterly, at the option of the Insured, according to the following:

Table of payments

Annual Premium	*$379.90
Due 1st of October in advance	
Semi-Annual Premium	$197.60
Due 1st of October and April in advance	
Quarterly Premium	$100.70
Due 1st of October, January, April, and July in advance	
Annual contribution from said Premiums (2nd to 20th years), as herein provided, to S. I. Fund	
$64.60	

Ta

Blank Spaces For

[Applicable to this policy, if free from indebte

EXPLANATION: The Cash Loan Value for each $1,000 of this policy is the amount shown in TABLE 1 below, in indicating the number of full years' premiums paid hereon.

The amounts of the Cash Surrender Value and of the Paid-up Insurance Value for each $1,000 of this policy, ar respectively, in the column designating the age, marked with an asterisk, at which this policy is issued and oppos quarter in the third or any subsequent policy year) a proportionate allowance will be made in computing benefits

ILLUSTRATI : The Paid-Up Insurance Value available on each $1,000 of a policy issued at age 35 after paymen $463.00 or $1,157.50.

TABLE 1.

[Based on a Policy of $1,000. Cash Va

Years Premiums Paid	★	Age at wh									
		15	16	17	18	19	20	21	22	23	2
2		$13	$13	$14	$14	$14	$14	$14	$14	$15	
3		26	26	27	27	28	28	28	29	29	
4		38	39	40	41	42	42	43	43	44	
5		52	53	54	55	56	57	58	59	60	
6		69	70	71	73	74	76	77	79	80	
7		86	88	90	92	94	96	97	99	102	
8		105	107	109	112	114	117	119	121	124	
9		125	127	130	133	135	138	141	144	147	
10		145	148	151	154	158	161	164	167	171	
11		166	169	173	176	180	183	187	191	195	
12		187	191	195	199	203	207	211	215	219	
13		210	214	218	222	227	229	236	240	245	
14		233	237	242	247	252	257	262	267	272	
15		257	262	267	272	278	283	289	294	301	
16		282	288	293	299	305	311	317	323	330	
17		308	315	320	327	333	340	346	353	361	
18		336	343	349	356	363	370	377	385	392	
19		364	371	378	385	393	401	409	417	426	
20		419	427	435	443	451	459	468	476	485	

TABLE 2. *Paid-*

[Based o

Years Premiums Paid		Age at wh									
		15	16	17	18	19	20	21	22	23	2
2		$41	$41	$41	$40	$40	$40	$40	$40	$40	
3		78	78	78	78	78	78	78	79	79	
4		115	115	115	116	117	117	118	118	118	
5		153	154	154	155	156	156	157	157	158	
6		200	202	203	206	207	209	212	213	214	
7		259	261	262	265	266	268	271	272	273	
8		319	321	322	325	326	328	330	331	332	
9		379	381	382	384	386	388	389	390	391	
10		440	441	442	444	446	448	449	450	451	
11		501	502	503	505	506	508	509	510	511	
12		562	563	564	565	567	568	569	570	571	
13		624	625	625	626	628	629	629	630	631	
14		686	687	687	688	689	690	690	691	691	
15		749	749	749	749	751	751	751	751	752	
16		811	812	811	811	812	812	812	812	813	
17		875	875	873	873	874	874	873	873	872	
18		938	938	936	936	936	936	934	934	933	
19		999	999	996	996	996	996	996	995	994	
20		1000	1000	1000	1000	1000	1000	1000	1000	1000	10

TABLE 3. *Extended ins*

Years Premiums Paid		Age at wh									
		15	16	17	18	19	20	21	22	23	
	Yrs. Mo.	*Yrs. Mo.*	*Yrs. Mo.*	*Yrs. Mo.*	*Yrs. Mo.*	*Yrs. Mo.*	*Yrs. Mo.*	*Yrs. Mo.*	*Yrs. Mo.*	*Yrs. Mo.*	*Yr*
2		1 6	1 6	1 6	1 6	1 7	1 7	1 8	1 8	1 8	

Tables of Values

Blank Spaces For Head Office Endorsements Only

[Applicable to this policy, if free from indebtedness, under the conditions specified in the policy]

EXPLANATION: The Cash Loan Value for each $1,000 of this policy is the amount shown in TABLE 1 below, in the column under the age, marked with an asterisk, at which the policy is issued and opposite the number in the first column indicating the number of full years' premiums paid hereon.

The amounts of the Cash Surrender Value and of the Paid-up Insurance Value for each $1,000 of this policy, and the term of Extended Insurance from the original due date of the unpaid premium, are shown in TABLES 1, 2, and 3 below, respectively, in the column designating the age, marked with an asterisk, at which this policy is issued and opposite the number indicating the full years for which premiums have been paid. At intervening periods (i. e., at the end of any quarter in the third or any subsequent policy year) a proportionate allowance will be made in computing benefits for any fractional portion of a year's premium paid.

ILLUSTRATION: The Paid-Up Insurance Value available on each $1,000 of a policy issued at age 35 after payment of premiums for 10 full years is $463.00. The Paid-Up Insurance Value, therefore, on a policy of $2,500 would be 2½ times $463.00 or $1,157.50.

TABLE 1. *Cash and loan values*

[Based on a Policy of $1,000. Cash Values at end of Year; Loan Values any time during Year]

Years Premiums Paid	Age at which policy is issued ★																					Years Premiums Paid
	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	
2	$13	$13	$14	$14	$14	$14	$14	$14	$15	$15	$15	$16	$16	$16	$16	$17	$17	$17	$18	$18	$19	2
3	26	26	27	27	28	28	28	29	29	30	30	31	32	32	33	34	34	35	36	36	37	3
4	38	39	40	41	42	42	43	43	44	45	46	47	48	49	50	51	52	53	54	55	56	4
5	52	53	54	55	56	57	58	59	60	61	62	64	65	66	68	69	70	72	73	75	77	5
6	69	70	71	73	74	76	77	79	80	82	84	86	88	90	93	95	97	99	102	104	107	6
7	86	88	90	92	94	96	97	99	102	104	106	109	111	114	116	119	122	125	128	131	134	7
8	105	107	109	112	114	117	119	121	124	127	129	132	135	138	141	145	148	151	155	158	162	8
9	125	127	130	133	135	138	141	144	147	150	153	157	160	164	167	171	175	179	183	187	191	9
10	145	148	151	154	158	161	164	167	171	174	178	182	186	190	194	198	203	207	212	219	221	10
11	166	169	173	176	180	183	187	191	195	199	203	207	212	216	221	226	231	236	241	246	251	11
12	187	191	195	199	203	207	211	215	219	224	229	234	239	244	249	254	260	265	271	277	283	12
13	210	214	218	222	227	229	236	240	245	250	256	261	267	272	278	284	290	296	303	309	316	13
14	233	237	242	247	252	257	262	267	272	278	284	290	296	302	309	315	322	329	336	343	350	14
15	257	262	267	272	278	283	289	294	301	307	313	320	326	333	340	347	355	362	370	377	385	15
16	282	288	293	299	305	311	317	323	330	337	344	351	358	366	373	381	389	397	406	414	422	16
17	308	315	320	327	333	340	346	353	361	368	375	383	391	399	408	416	424	433	442	451	460	17
18	336	343	349	356	363	370	377	385	392	400	409	417	426	434	443	452	462	471	481	490	500	18
19	364	371	378	385	393	401	409	417	426	434	443	452	462	471	481	490	500	511	521	531	541	19
20	419	427	435	443	451	459	468	476	485	495	504	514	524	534	544	555	565	576	587	598	610	20

TABLE 2. *Paid-up insurance values*

[Based on a Policy of $1,000]

Years Premiums Paid	Age at which policy is issued																					Years Premiums Paid
	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	
2	$41	$41	$41	$40	$40	$40	$40	$40	$40	$40	$41	$41	$41	$41	$41	$41	$41	$41	$41	$41	$41	2
3	78	78	78	78	78	78	78	79	79	79	80	80	80	81	81	81	82	82	82	82	83	3
4	115	115	115	116	117	117	118	118	118	119	120	120	120	121	121	121	122	122	123	123	124	4
5	153	154	154	155	156	156	157	157	158	158	159	159	160	162	164	166	168	170	171	172	173	5
6	200	202	203	206	207	209	212	213	214	215	217	219	220	221	222	224	226	227	229	230	231	6
7	259	261	262	265	266	268	271	272	273	274	276	278	279	280	282	283	285	286	287	288	289	7
8	319	321	322	325	326	328	330	331	332	333	335	337	339	340	341	342	343	344	345	346	347	8
9	379	381	382	384	386	388	389	390	391	392	394	396	398	399	400	401	402	403	404	405	405	9
10	440	441	442	444	446	448	449	450	451	452	454	456	457	458	459	460	461	462	462	463	463	10
11	501	502	503	505	506	508	509	510	511	512	514	515	516	517	518	519	519	520	520	520	520	11
12	562	563	564	565	567	568	569	570	571	572	574	575	576	576	577	577	577	577	577	577	577	12
13	624	625	625	626	628	629	629	630	631	632	634	634	634	635	635	635	635	635	636	635	634	13
14	686	687	687	688	689	690	690	691	691	692	693	693	693	693	693	693	693	692	692	692	691	14
15	749	749	749	749	751	751	751	751	752	752	752	752	752	751	751	751	750	750	749	749	748	15
16	811	812	811	811	812	812	812	812	813	812	812	812	811	811	810	810	809	808	807	806	806	16
17	875	875	873	873	874	874	873	873	872	872	872	871	871	870	869	868	867	866	865	864	862	17
18	938	938	936	936	936	936	934	934	933	933	932	931	930	929	928	926	925	924	923	921	919	18
19	999	999	996	996	996	996	996	995	994	993	992	991	990	988	986	984	983	981	979	977	975	19
20	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	20

TABLE 3. *Extended insurance for face amount of policy*

Years Premiums Paid	Age at which policy is issued																					Years Premiums Paid
	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	
	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	
2	1 6	1 6	1 6	1 6	1 7	1 7	1 8	1 8	1 8	1 9	1 9	1 9	1 9	1 9	1 9	1 10	1 10	1 10	1 10	1 10	1 10	2
3	2 9	3 1	3 2	3 2	3 2	3 2	3 3	3 3	3 4	3 4	3 5	3 5										

2		$13	$13	$14	$14	$14	$14	$14	$14	$15	$15	$15	$16	$16	$16	$16	$17	$17	$17	$18	$18	$19	2
3		26	26	27	27	28	28	28	29	29	30	30	31	32	32	33	34	34	35	36	36	37	3
4		38	39	40	41	42	42	43	43	44	45	46	47	48	49	50	51	52	53	54	55	56	4
5		52	53	54	55	56	57	58	59	60	61	62	64	65	66	68	69	70	72	73	75	77	5
6		69	70	71	73	74	76	77	79	80	82	84	86	88	90	93	95	97	99	102	104	107	6
7		86	88	90	92	94	96	97	99	102	104	106	109	111	114	116	119	122	125	128	131	134	7
8		105	107	109	112	114	117	119	121	124	127	129	132	135	138	141	145	148	151	155	158	162	8
9		125	127	130	133	135	138	141	144	147	150	153	157	160	164	167	171	175	179	183	187	191	9
10		145	148	151	154	158	161	164	167	171	174	178	182	186	190	194	198	203	207	212	216	221	10
11		166	169	173	176	180	183	187	191	195	199	203	207	212	216	221	226	231	236	241	246	251	11
12		187	191	195	199	203	207	211	215	219	224	229	234	239	244	249	254	260	265	271	277	283	12
13		210	214	218	222	227	229	236	240	245	250	256	261	267	272	278	284	290	296	302	309	315	13
14		233	237	242	247	252	257	262	267	272	278	284	290	296	302	309	315	322	329	335	343	350	14
15		257	262	267	272	278	283	289	294	301	307	313	320	326	333	340	347	355	363	370	377	385	15
16		282	288	293	299	305	311	317	323	330	337	344	351	358	366	373	381	389	397	406	414	422	16
17		308	315	320	327	333	340	346	353	361	368	375	383	391	399	408	416	424	433	442	451	460	17
18		336	343	349	356	363	370	377	385	392	400	409	417	426	434	443	452	462	471	481	490	500	18
19		364	371	378	385	393	401	409	417	426	434	443	452	462	471	481	490	500	511	521	531	541	19
20		419	427	435	443	451	459	468	476	485	495	504	514	524	534	544	555	565	576	587	598	610	20

TABLE 2. *Paid-up insurance values*

[Based on a Policy of $1,000]

Years Premiums Paid	Age at which policy is issued																					Years Premiums Paid
	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	
2	$41	$41	$41	$40	$40	$40	$40	$40	$40	$40	$41	$41	$41	$41	$41	$41	$41	$41	$41	$41	$41	2
3	78	78	78	78	78	78	78	79	79	79	80	80	80	81	81	81	82	82	82	82	82	3
4	115	115	115	116	117	117	118	118	118	119	120	120	120	121	121	121	122	122	123	123	124	4
5	153	154	154	155	156	156	157	157	158	158	159	159	160	162	164	166	168	170	171	172	173	5
6	200	202	203	206	207	209	212	213	214	215	217	219	220	221	222	224	226	227	229	230	231	6
7	259	261	262	265	266	268	271	272	273	274	276	278	279	280	282	283	285	286	287	288	289	7
8	319	321	322	325	326	328	330	331	332	333	335	337	339	340	341	342	343	344	345	346	347	8
9	379	381	382	384	386	388	389	390	391	392	394	396	398	399	400	401	402	403	404	405	405	9
10	440	441	442	444	446	448	449	450	451	452	454	456	457	458	459	460	461	462	462	463	463	10
11	501	502	503	505	506	508	509	510	511	512	514	515	516	517	518	519	519	520	520	520	520	11
12	562	563	564	565	567	568	569	570	571	572	574	575	575	576	576	577	577	577	577	577	577	12
13	624	625	625	626	628	629	629	630	631	632	634	634	634	635	635	635	635	635	636	635	634	13
14	686	687	687	688	689	690	690	691	691	692	693	693	693	693	693	693	693	692	692	692	691	14
15	749	749	749	749	751	751	751	751	752	752	752	752	752	751	751	751	750	750	749	749	749	15
16	811	812	811	811	812	812	812	812	813	812	812	812	811	811	810	810	809	808	807	806	806	16
17	875	875	873	873	874	874	873	873	872	872	872	871	871	870	869	868	867	866	865	864	862	17
18	938	938	936	936	936	936	934	934	933	933	932	931	930	929	928	926	925	924	923	921	919	18
19	999	999	996	996	996	996	996	995	994	993	992	991	990	988	986	984	983	981	979	977	975	19
20	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	20

TABLE 3. *Extended insurance for face amount of policy*

Years Premiums Paid	Age at which policy is issued																					Years Premiums Paid
	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	
	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.	Yrs. Mo.		
2	1 6	1 6	1 6	1 6	1 7	1 7	1 8	1 8	1 8	1 9	1 9	1 9	1 9	1 9	1 9	1 10	1 10	1 10	1 10	1 10	1 10	2
3	3 0	3 1	3 2	3 2	3 2	3 2	3 3	3 3	3 4	3 4	3 5	3 5	3 5	3 5	3 6	3 6	3 6	3 6	3 7	3 7	3 7	3
4	4 7	4 8	4 9	4 10	4 10	4 11	5 0	5 1	5 2	5 3	5 4	5 4	5 5	5 6	5 7	5 7	5 8	5 8	5 9	5 10	5 11	4
5	6 4	6 5	6 6	6 7	6 8	6 9	7 1	7 2	7 3	7 5	7 7	7 8	7 9	7 10	7 11	8 1	8 3	8 4	8 5	8 5	8 6	5
6	8 9	8 11	9 2	9 4	9 6	9 8	9 10	10 0	10 2	10 4	10 5	10 7	10 8	10 9	10 10	10 11	10 11	10 11	10 11	10 10	10 9	6
7	12 0	12 3	12 6	12 8	12 10	13 1	13 3	13 5	13 7	13 9	13 10	13 11	14 0	14 0	13 11	13 10	13 9	13 7	13 5	13 3	13 0	7
8	15 5	15 11	16 3	16 5	16 7	16 9	16 11	17 0	17 1	17 2	17 2	17 2	17 1	17 0	16 11	16 9	16 7	16 4	16 0	15 9	15 5	8
9	19 9	20 0	20 3	20 4	20 5	20 6	20 7	20 7	20 7	20 6	20 4	20 2	20 0	19 9	19 6	19 2	18 10	18 6	18 1	17 8	17 3	9
10	24 0	24 2	24 4	24 3	24 3	24 2	24 0	23 10	23 8	23 5	23 2	22 10	22 6	22 2	21 9	21 4	20 11	20 6	20 0	19 6	18 11	10
11	28 1	28 1	27 11	27 9	27 7	27 4	27 1	26 9	26 5	26 0	25 7	25 2	24 9	24 3	23 9	23 3	22 8	22 1	21 6	20 11	20 4	11
12	31 9	31 6	31 2	30 10	30 6	30 1	29 8	29 2	28 9	28 3	27 9	27 2	26 7	26 0	25 5	24 10	24 3	23 8	23 0	22 4	21 8	12
13	34 11	34 8	34 0	33 6	32 6	31 11	31 5	30 10	30 2	29 7	29 0	28 4	27 8	27 0	26 4	25 8	25 0	24 3	23 6	22 9	22 1	13
14	37 7	37 1	36 5	35 10	35 3	34 8	34 0	33 4	32 8	32 0	31 3	30 7	29 10	29 2	28 5	27 8	26 11	26 2	25 5	24 8	23 11	14
15	40 1	39 5	38 8	38 0	37 4	36 8	35 11	35 5	34 11	34 1	33 3	32 6	31 8	30 11	30 0	29 0	28 3	27 5	26 7	25 10	25 0	15
16	42 6	41 9	40 11	40 2	39 5	38 8	37 10	37 1	36 4	35 6	34 8	33 10	33 0	32 2	31 4	30 6	29 8	28 10	28 0	27 2	26 3	16
17	45 1	44 3	43 3	42 7	41 10	40 11	40 1	39 3	38 5	37 7	36 8	35 10	35 0	34 1	33 2	32 3	31 5	30 6	29 7	28 8	27 9	17
18	47 8	47 0	46 0	45 0	44 0	43 1	42 2	41 3	40 4	39 4	38 5	37 6	36 6	35 6	34 6	33 7	32 8	31 8	30 8	29 8	28 8	18
19	50 2	49 0	48 0	47 0	46 0	45 0	44 0	43 1	42 1	41 2	40 3	39 4	38 5	37 6	36 7	35 8	34 9	33 10	32 11	32 0	31 1	19
20	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	For Life	20

The Loan and Surrender Values prior to the 20th year are the equivalent of the Reserve reduced by a sum not exceeding 2½% of the amount insured; and for the 20th and subsequent years such values are the equivalent of the Reserve without such deduction. The Reserve above mentioned does not include any reserve maintained on account of Accident and Disability Benefits. The Cash Surrender Values at all times are at least equal to the reserve value of the Extended Insurance and of the Paid-up Insurance.

29 Before United States Board of Tax Appeals

Promulgated July 12, 1934

1. The furniture and fixtures of the petitioner were used in both its investment and underwriting business. Held, that the petitioner is entitled to deduct from gross income only the amount of the depreciation sustained upon the furniture and fixtures used in its investment business.

2. The petitioner purchased annually from the Medical Inspection Bureau certain medical information cards which it claimed had a useful life of approximately 10 years. In its tax return it deducted from gross income an amount representing the obsolescence upon these cards. Since these cards were used exclusively in its underwriting, it is held that the amount is not a legal deduction from gross income.

3. The petitioner issued 20-payment life insurance policies which provided that a portion of each premium payment should be set aside in a "survivorship investment fund", to be accumulated at interest and distributed to surviving persistent policyholders of the class after 20 years. Held, that the fund constituted a reserve required by law, upon which the petitioner is entitled to a 4 percent reserve deduction.

4. In its income tax return the petitioner deducted $1,240.91 as interest paid on indebtedness. The amount represented discounts on premiums. Held, that the amount is not a legal deduction from gross income.

Samuel B. Kraus, Esq., for the petitioner.

L. W. Creason, Esq., for the respondent.

Opinion

Filed July 12, 1934

SMITH: This is a proceeding for the redetermination of a deficiency in income tax for 1929 of $1,115.25. The petitioner alleges that the respondent erred in disallowing the deduction from gross income of (1) a portion of the depreciation sustained by it upon its furniture and fixtures; (2) an amount claimed as depreciation upon certain medical information cards; and by an amended answer the respondent alleges that he erred (3) in not excluding from the company's reserve funds the mean of a "survivorship investment
30 fund" and that through his failure to do so the petitioner has erroneously been allowed a deduction of $133,755.71 in the computation of the deficiency; and (4) that the respondent erroneously failed to disallow the deduction from gross income of $1,241.91 representing discounts on premiums claimed in the return "as interest on indebtedness." The respondent has moved to increase the deficiency accordingly.

The petitioner is an Illinois corporation which has its home and principal office in Chicago. During the calendar year 1929 and prior thereto it was engaged in the business of issuing and writing life insurance policies on the life of individuals.

Issue No. 1

During the year 1929 the petitioner owned and used in its business certain furniture and fixtures which it had acquired between 1921 and 1929 and for which it had paid $69,753.19. Its purchases of such assets in 1929 amounted to $5,635.78. The useful life of these assets was approximately ten years. They were used by the petitioner in both its investment and underwriting business and their use in connection with the investment department of its business, producing the statutory income designated interest, dividends, and rents, amounted to 28 percent of their use for all purposes. The remaining 72 percent of use was in connection with the production of the petitioner's non-statutory or underwriting income.

The petitioner included in deductions from gross income reported on its income tax return for the calendar year 1929 the amount of $6,975.31 as depreciation on furniture and fixtures, which amount represented 10 percent of the cost of all the furniture and fixtures owned. In determining the deficiency upon which this proceeding is based the respondent allowed only $1,953.09 of the amount so deducted by the petitioner, being 10 percent of the cost of that portion of the furniture and fixtures which was used in the production of statutory income; that is, income from interest, dividends, and rents. The petitioner claims the deduction of the full amount of $6,975.31.

This issue is decided in favor of the respondent upon the authority of Rockford Life Ins. Co. v. Commissioner, — U. S. — (May 21, 1934). The depreciation deduction as to purchases in 1929 is subject to adjustment in accordance with the respondent's regulations; they were not owned for a full year.

31 Issue No. 2.

During the calendar year 1929 petitioner owned certain so-called medical information cards which had been acquired at a cost of $51,164.27 during the years 1921 to 1929, inclusive. The amount expended in the year 1929 was $7,517.06. The medical information cards were individual cards. Each card contained a code report of the physical disabilities found upon examination of individuals applying for insurance to life insurance companies which purchased such cards from the Medical Inspection Bureau. Each life insurance company which purchased these cards made a report of the physical impairments found upon the examination of the applicants. The cards were replaced from time to time if and when later examinations of the same individuals were made. Such of the cards as were not

otherwise replaced within a period of approximately ten years were removed from the files or destroyed.

The petitioner included in the deductions from gross income reported on its income tax return for 1929 the amount of $5,116.43 as depreciation or obsolescence of such medical information cards, being 10 percent of the total cost thereof. In determining the deficiency proposed in the 60-day deficiency notice upon which the computation herein is based the respondent disallowed the deduction of this amount of $5,116.43.

All of the medical information cards hereinabove referred to were used exclusively in the production of nonstatutory or underwriting income and no part of these cards was used in the production of petitioner's statutory net income; that is, income from interest, dividends, and rents. We sustain the action of the respondent in disallowing the deduction of the $5,116.43 in question. *Rockford Life Ins. Co.* v. *Commissioner*, *supra*.

Issue No. 3.

During and prior to the calendar year 1929 the petitioner issued certain so-called survivorship investment policies. A specimen copy of a "20-Payment Life Survivorship Investment Policy" was introduced in evidence as Joint Exhibit A. The provisions of this policy relative to the survivorship investment feature are that upon such policies the petitioner sets aside a portion of each premium payment which is placed in the "survivorship investment fund."
32 This fund is accumulated at the rate of 3½ percent per annum compound interest from the dates of the respective payments of premiums. At the expiration of the 20-year life of the policy the insured has the option of continuing the policy as a fully paid-up policy without further premiums, and receiving in addition a cash payment of the survivorship investment apportioned to his policy or a fully paid nonparticipating life policy for such amount as will be purchased by the survivorship investment at the applicable single premium rate, or the policyholder may surrender the policy and receive in cash the entire guaranteed cash surrender value plus the portion of the survivorship investment fund apportioned to his policy. For each calendar year there is a different survivorship class. The survivorship investment fund can not be used except for the payment of survivorship benefits and at the end of 20 years the entire fund in the class maturing in that year is to be distributed among all the members in good standing in the class in proportion to their respective contributions to the fund established for that class.

In determining net income, life insurance companies are authorized by section 203 (a) (2) of the Revenue Act of 1928 to deduct from gross income "An amount equal to the excess, if any, over the deduction specified in paragraph (1) of this subsection [tax-free interest], of 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year."

The survivorship investment funds at the beginning and end of the taxable year of the petitioner were as follows:

	December 31, 1928	December 31, 1929
"Survivorship investment funds"	$3,249,580.06	$3,342,162.91
"Additional liability on S. I. policies contingent on payment of deferred and uncollected premiums"	48,707.53	47,334.82
Total	3,298,287.59	3,389,497.73

In its income tax return for 1929 the petitioner deducted from gross income $133,755.71 representing 4 percent of the mean of the "survivorship investment funds" at the beginning and end of the year 1929.

The sole question arising upon this issue is whether the re-
33 serve funds above described were "reserve funds required by law." The petitioner was organized and operated under the laws of the State of Illinois. In 1929 its operations were governed by an act approved May 20, 1907, in force January 1, 1908, and officially printed in the Session Laws of 1907, page 367. . This act is also contained in Cahill's Illinois Revised Statutes (1929), chapter 73, commencing at paragraph 375. Section 1 of the act provides in part as follows:

"Sec. 1. That from and after January 1, 1908, no policy of life insurance shall be issued or delivered in this State or be issued by a life insurance company organized under the laws of this State, unless the same shall provide the following:

* * * * * * *

"(5–c) The provisions of the preceding paragraphs numbered (5–a) and (5–b) of this section shall not apply to any form of paid-up insurance or temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies, or to nonparticipating policies: Provided, however, that if any company shall issue any nonparticipating policy under the terms of which any stipulated part of premiums received is to be placed in a separate fund for subsequent apportionment, such company shall furnish the Department of Trade and Commerce each year a statement showing the number and amount of all such policies in force at the beginning of the year for which the statement is made; of all such policies issued and revived or terminted during the said year with the mode of termination; and the number and amount of all of such policies in force at the end of saidyear. Also a statement showing any and all amounts provisionally set apart, ascertained or calculated or held awaiting apportionment upon such policies according to classes, at the beginning of said year, the additions made to the said fund during the year with the source from which such additions arose, the deductions made from the said fund (if permitted by the contract) during the year with the reasons therefor and the amount of said fund at the end of the year; which shall be

carried as a distinct and separate reserve liability of the company for the benefit of the classes of policies from the premium payments on which the sum was accumulated. No part of said fund
34 prior to the time of distribution stipulated in the contract, shall be considered in determining the loan and cash and other surrender values provided for by this Act. * * *"

It is to be observed that paragraph (5–c) of section 1 of the above cited act applies to precisely the type of policy introduced in Joint Exhibit A and that the portions of the premiums allocated to the "survivorship investment fund" are expressly required to "be carried as a distinct and separate reserve liability of the company for the benefit of the classes of policies from the premium payments on which the sum was accumulated."

In Standard Life Ins. Co. of America, 13 B. T. A. 13; affd., 47 Fed. (2d) 218, we set forth at length what constitutes the reserve funds of a life insurance company. In short the reserve funds required by law of a life insurance company are those funds which the company must, pursuant to statute, maintain as a reserve upon the valuation of the policies. The outstanding policies are valued according to their terms as of a particular date and the sum total of such valuations constitutes the reserve funds. Such reserve funds are exclusive of certain liabilities which the company may have and which may be required to be shown in their annual statements. Massachusetts Mutual Life Ins. Co. v. United States, 56 Fed. (2d) 897; United States v. Boston Ins. Co., 269 U. S. 197.

There can be no question in the present case but that the "survivorship investment fund" maintained by the petitioner was a reserve fund required by law. Nor can there be any question but that such a fund constitutes a policy reserve. It constituted a part of the fund that the petitioner was required to have on hand to meet its policy obligations at the end of the 20-year premium payment period. We sustain the petitioner's contention upon this issue. See Missouri State Life Ins. Co., 29 B. T. A. 401; Standard Life Ins. Co. of America, supra; Commissioner v. Western Union Life Ins. Co., 61 Fed. (2d) 207; Reserve Loan Life Ins. Co., 18 B. T. A. 359.

Issue No. 4

The petitioner included as a deduction on its income tax return for 1929 as "interest on indebtedness" certain discounts on premiums in the amount of $1,241.91. In determining the deficiency proposed in the 60-day deficiency notice upon which the petition herein is
35 based the respondent did not disallow said amount as a deduction. He now alleges that he erred in failing to make such disallowance.

In its brief the petitioner does not question the correctness of the respondent's contention upon this issue.

The contention of the respondent is sustained. The evidence fails to show that the $1,241.91 was interest "paid or accrued within the taxable year on its indebtedness" within the meaning of section 203 (a) (8) of the Revenue Act of 1928.

Reviewed by the Board. Judgment will be entered under Rule 50.
Trammell concurs in the result.
Black, Marquette, Morris, and Leech dissent.

Before the United States Board of Tax Appeals

Decision

Entered Aug. 30, 1934

Pursuant to the opinion of the Board in the above-entitled proceeding promulgated July 12, 1934, the respondent, on August 7, 1934, filed with the Board a notice of settlement. Hearing was had thereon on August 29, 1934, at which time there was no appearance for the petitioner and the notice of settlement filed by the respondent was not contested. Wherefore, it is

Ordered and Decided that there is an unpaid assessment to be abated, in the amount of $14,713.24.

[SEAL] (S.) CHARLES P. SMITH, *Member.*

Entered August 30, 1934.

36 Before United States Board of Tax Appeals

Order amending decision

Entered Sept. 5, 1934

For good cause shown of record, it is—

Ordered that the decision of the Board in the above-entitled proceeding entered August 30, 1934, be and the same is hereby amended by striking therefrom the last paragraph and by substituting therefor the following:

Ordered and Decided as follows:

1929

Tax assessed:		
Original, Account #403798		$32,335.06
Additional, March 1933, 21C, #4		15,964.99
Total		48,300.05
Tax paid (Form 899):		
March 17, 1930	$8,088.77	
June 13, 1930	8,078.76	
September 15, 1930	8,078.77	
December 15, 1930	8,088.76	
Total tax paid		32,335.06
Difference		15,964.99
Correct tax liability	$33,586.81	
Tax paid	32,335.06	
Unpaid portion of tax liability		1,251.75
Unpaid assessment to be abated		14,713.24

[SEAL] (S.) EUGENE BLACK, *Member.*

Dated: September 4, 1934.

Entered September 5, 1934.

37 In United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted.]

Notice of filing petition for review

Filed Nov. 20, 1934

To:

Mr. ABEL DAVIS, *Receiver,*
% Illinois Life Insurance Company,
SAMUEL B. KRAUS, Esq.,
% West and Eckhart,
First National Bank Building, Chicago, Illinois.

(Stamped:) Received Nov. 20, 1934, U. S. Board of Tax Appeals.

You are hereby notified that the Commissioner of Internal Revenue did, on the 7th day of November 1934, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

(Signed) ROBERT H. JACKSON,
Assistant General Counsel for the
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 10th day of November 1934.

(Signed) ABEL DAVIS,
Receiver for Respondent on Review.
By CHESTER A. DAVIS,
(Signed) SAMUEL B. KRAUS,
Attorney for Respondent on Review.

38 In United States Circuit Court of Appeals

Petition for review to the United States Circuit Court of Appeals for the Seventh Circuit

Filed Nov. 7, 1934

To the Honorable Judges of the Circuit Court of Appeals for the Seventh Circuit:

Comes now Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Frank J. Wideman, Assistant Attorney General, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, and Hugh R. Dowling, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I

The petitioner on review (hereinafter referred to as the Commissioner), is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States, appointed and holding his office by virtue of the laws of the United States. The respondent on review (hereinafter referred to as the taxpayer), is a corporation, which at all times material herein, had its principal place of business and principal office at 1212 Lake Shore Drive, Chicago, Illinois, and said corporation at all times material herein made its returns of income to the Collector of Internal Revenue, Chicago, Illinois, all of which is within the jurisdiction of the United States Circuit Court of Appeals for the Seventh Circuit.

II

The matter in controversy involves the liability of the taxpayer for income taxes for the taxable year 1929 in the amount of $14,713.24, imposed under the pertinent provisions of the Revenue Act of 1928.

III

In reporting its income for 1929 the taxpayer failed to in-
39 clude a sum amounting to 4% of the mean of certain survivorship investment funds and other similar funds on hand at December 31, 1928, and December 31, 1929. By affirmative allegation in the pleadings before the Board of Tax Appeals, counsel for the Commissioner added this sum, (amounting to $133,755.71) to taxpayer's income for the reason that that amount did not constitute a deduction allowed by law.

In its opinion issued on July 12, 1934, the Board of Tax Appeals held that the sum in question was a part of a fund which the taxpayer was required by law to have on hand to meet its policy obligations at the end of the twenty-year premium payment period and was, therefore, a policy reserve deductible from income. The final decision of the Board in accordance with its opinion was issued on August 30, 1934. On September 5, 1934, an order amending the decision was issued, which, however, did not affect the result reached in the decision previously issued, but merely set forth more clearly the manner in which the recomputation of the deficiency was made.

IV

A review by the United States Circuit Court of Appeals for the Seventh Circuit is sought herein of said decision by the United States Board of Tax Appeals.

V

The Commissioner says that in the decision and the final orders of redetermination rendered and entered by the Board, manifest errors

occurred and intervened to the prejudice of the Commissioner, and the Commissioner assigns the following errors and each of them, which he avers occurred in said record, proceedings, finds of fact, decision and final order of redetermination, and upon which he relies as grounds for the reversal of said decision and final order of redetermination so rendered and entered by the Board of Tax Appeals, to-wit:

1. In finding as an ultimate fact that at the expiration of the twenty-year life of the specified insurance policy, the insured is entitled to receive a fully paid non-participating life policy for such amount as will be purchased by the survivorship investment at the applicable single premium rate.

2. In finding as an ultimate fact that the funds set aside by the taxpayer upon which the amount in question was based, were reserve funds required by the laws of the State of Illinois.

3. In failing to find that the amount of $133,755.71 representing 4% of the mean of the amounts in the survivorship and related funds at the beginning and end of the year 1929 was taxable as income to the petitioner.

4. In holding that the amount of $133,755.71 referred to in the preceding paragraph constituted a deduction allowed by law.

5. In holding as a matter of law that because the sum of $133,755.71 was a part of reserve funds required by law, it was for this reason exempt from Federal income taxation.

6. In failing to find the petitioner liable for additional income tax in the amount of $14,713.24.

Wherefore, the Commissioner petitions that the decision and final order of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Seventh Circuit, and that a transcript of the record be prepared in accordance with the law and the rules of said Court and be transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Signed) FRANK J. WIDEMAN,
Assistant Attorney General.
(Signed) ROBERT H. JACKSON,
Assistant General Counsel for the Bureau of Internal Revenue.

Of Counsel:
J. R. JOHNSTON,
HUGH R. DOWLING,
Special Attorneys,
Bureau of Internal Revenue.

[*Duly sworn to by Hugh R. Dowling; jurat omitted in printing.*]

41 Before United States Board of Tax Appeals

Order enlarging time

Entered Dec. 29, 1934

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Seventh Circuit, be and it is hereby extended to February 15, 1935.

[SEAL] (Signed) EUGENE BLACK, *Member.*

Dated Washington, D. C., December 29, 1934.

Now, February 28, 1935, the foregoing order enlarging time certified from the record as a true copy.

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

42 Before United States Board of Tax Appeals

Order enlarging time

Entered Feb. 14, 1935

On motion of counsel for the petitioner, it is

Ordered that the time for preparation of the evidence and for transmission and delivery of the record sur petition for review of the above entitled proceeding in the United States Circuit Court of Appeals for the Seventh Circuit be and it is hereby extended to March 13, 1935.

Dated: Washington, D. C., Feb. 14, 1935.

[SEAL] (Signed) EUGENE BLACK, *Member.*

Now, February 28, 1935, the foregoing order enlarging time certified from the record as a true copy.

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

In United States Circuit Court of Appeals

Praecipe for record

Filed Feb. 14, 1935

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Seventh Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board.

(a) Petition, including annexed copy of deficiency letter.

(b) Answer and Amendment to Answer filed September 26, 1932 and October 25, 1933, respectively.

3. Opinion of the Board promulgated July 12, 1934, and
43 decisions of the Board dated respectively August 30, 1934 and September 5, 1934.

4. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

5. Statement of the evidence as settled and allowed.

6. Order enlarging time for the preparation of the evidence and the transmission and delivery of the record not included in record.

7. This Praecipe.

(Signed) ROBERT H. JACKSON,
Assistant General Counsel for the Bureau of Internal Revenue.
(Sd.) ABEL DAVIS,
Receiver for Illinois Life Ins. Co.
By CHESTER R. DAVIS.

Service of a copy of the within praecipe is hereby admitted this 4 day of February, 1935.

(Sd.) SAMUEL B. KRAUS,
Attorney for Respondent.

[Clerks, Certificates to foregoing transcript omitted in printing.]

45 [Caption omitted.]

[Minute entry of argument and submission, Nov. 6, 1935, omitted in printing.]

46 In United States Circuit Court of Appeals for the Seventh Circuit

No. 5469. October Term and Session, 1935

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,
vs.
ILLINOIS LIFE INSURANCE COMPANY, RESPONDENT

On Petition for Review of the Decision of the United States Board of Tax Appeals

Before EVANS and ALSCHULER, Circuit Judges, and LINDLEY, District Judge

Opinion

Filed November 26, 1935

LINDLEY, District Judge: The Revenue Act of 1928, c. 852, 45 Stat. 791, Section 203, provides that net income of life insurance companies shall include gross income, less, among other items, "4 per centum

of the mean of the reserve funds required by law and held at the beginning and end of the taxable year. * * *" In pursuance of this provision, in reporting its income, the respondent deducted from its gross income for the year 1929, 4 per cent of the mean of a reserve carried by it, in accordance with the Illinois statute, termed "survivorship investment fund." The Commissioner disallowed the deduction and assessed an additional tax. The Board of Tax Appeals allowed the deduction. The Commissioner now petitions to review the Board's decision. The sole question involved is whether or not the "survivorship investment fund" of respondent is "a reserve fund required by law" within the meaning of the act of Congress.

47 Respondent is an Illinois life insurance corporation. During the taxable year it issued "survivorship investment" policies, which provide that the company will set aside a specific portion of each premium payment and place the same in the fund under consideration. This fund accumulates by the addition of 3½ per cent per annum compound interest from the dates of the respective payments. At the expiration of the twenty year period of a policy the insured, if living, has the option to continue it as fully paid up without further premium payments and receive in addition thereto payment in cash of the survivorship investment thereto apportioned; or to receive a paid-up non-participating life policy, for such amount as can be purchased by the survivorship investment fund at the applicable single premium rate; or to surrender the policy and receive its cash surrender value, plus the portion of the survivorship investment fund apportioned to the policy. If the insured dies prior to the expiration of the twenty year period, his beneficiary receives the face value of his policy but no part of the investment fund. In such case his contingent interest in the latter lapses in favor of those of the same class who survive the period.

The Illinois Statute provides that if any company shall issue any policy under the terms of which stipulated parts of the premiums are to be placed in a separate fund for subsequent apportionment "same shall be carried as a distinct reserve liability of the company for the benefit of the classes of policies, * * * on which the sum was accumulated." It is further provided that no part of such fund, prior to the time of distribution provided in the policy, shall be considered in determining the surrender values of the policy provided for by the act.

The Supreme Court of the United States in the case of Helvering, Commissioner of Internal Revenue v. Inter-Mountain Life Insurance Company, 294 U. S. 686, because of the conflict in various circuits as disclosed by certain cases (Commissioner v. Standard Life Ins. Co. (C. C. A. 3), 47 F. (2d) 218; Commissioner v. Western Union Life Ins. Co. (C. C. A. 9) 61 F. (2d) 207; Commissioner v. Great American Life Ins. Co. (C. C. A. 10), 70 F. (2d) 133; Continental Assur. Co. v. United States, 8 F. Supp. 474; Cf. Minnesota Mutual Life Ins. Co. v. United States, 66 Ct. Cls. 481; Massachusetts Mutual

Life Ins. Co. v. United States, 56 F. (2d) 897), granted certiorari in a case involving the question of whether reserves against matured but unpaid coupons attached to a policy are within the meaning
48 of the Revenue Act. By the terms of the policy the company agreed to accept the coupons involved in payment of premiums or to pay them in cash at any time after maturity, with interest. The Court held that the liability upon such coupons was not contingent but matured, unconditional and absolute, payable in cash or its equivalent, saying:

"In life insurance the reserve means the amount, accumulated by the company out of premium payments which is attributable to and represents the value of the life insurance elements of the policy contracts. * * * Life insurance matures only upon the death of the insured and the life reserve is based upon that contingency, whereas liability on the matured coupons depends upon no contingency. It follows that the insurance reserves alone constitute the base on which the deduction is to be computed. Reserves against matured coupons are excluded."

It is apparent from the language that the determining element was the fact that the matured coupons no longer represented contingent liabilities.

It is contended by petitioner that the survivorship investment fund here involved is like that involved in the case cited. But we find what, we think, are essential distinctions. Here, there is no matured liability; and there can be none unless the insured shall survive the maturity of his policy. That contingency is uncertain; it may or may not occur; and unless it occurs, the insured has no right to participate in the fund. Whether the company will ever become indebted to the insured, therefore, is contingent and uncertain. Furthermore, the amount payable remains uncertain and undeterminable until the first contingency shall have been removed. It is not possible to determine until the end of the period of the policy whether the insured will ever participate in the fund, or, if he does survive, what the amount of his participation will be.

These facts, it seems to us, effectively distinguish matured liabilities upon coupons, non-contingent in character, from the contingent liabilities protected by the survivorship investment fund.

It is said that the words of the Supreme Court in the Inter-Mountain case defining life insurance reserves are to be construed strictly and that we must eliminate from deductible reserves all funds
49 that are not within the original and elemental meaning of life insurance. In this connection respondent also relies upon the decision of the Court of Claims in Minnesota Mutual Life Insurance Company v. The United States, 66 Ct. of Cls. 481; certiorari denied. 279 U. S. 856, wherein the court held that all accumulated undistributed cash surrender funds are in the nature of savings deposits, not strictly life insurance, and, therefore, not within contemplation of Congress when it used the term "reserves required by law." If

we are to limit our conception of life insurance to the narrow class of sums payable in case of death, we shall thereby remove from reserves, it seems to us, all sums accumulated in any reserves payable in case of survivorship. Strictly speaking, perhaps, life insurance does not necessarily include guaranteed cash surrender values. Rather, if we speak literally, life insurance probably includes only policies of insurance, the provision of which is that in case of death, while the policy is in full force and effect, the face thereof shall be paid. But as insurance has developed, life insurance has come to mean more than mere payment of losses in case of death. It has come to include cash surrender values, guaranteed loan values, dividend, endowment, and tontine funds and other similar variations of the original insurance contract, brought into existence and embodied in insurance contracts to protect the insured, not only in case of death but, also, in case of survivorship. All cash surrender values, guaranteed loan values, tontine, endowment, and dividend payments are payable, not because of death, but because of investment of premiums for the benefit of an insured who has survived; and if we begin to eliminate such of these funds as represent the accumulation of investment of premiums, in the end we shall be compelled logically to eliminate all of them and also to limit our definition of "reserves required by law" to such reserves only as are created as a fund against the payment of death claims. This we do not believe was the intent of Congress; nor do we believe that the Supreme Court intended such construction of the statutory language in the Inter-Mountain case. In Maryland Casualty Co. v. United States, 251 U. S. 342, in discussing reserves, the Court said:

"The term 'reserve' or 'reserves' has a special meaning in the law of insurance. While its scope varies under different laws, in general it means a sum of money, variously computed or estimated, which, with accretions from interest, is set aside, 'reserved', as a fund with which to mature or liquidate, either by payment or reinsurance with other companies, future unaccrued and contingent claims, and claims accrued, but contingent and indefinite as to amount or time of payment."

In the later case, U. S. v. Boston Ins. Co., 269 U. S. 197, the Court modified this conclusion by eliminating the last class, "claims accrued, but contingent and indefinite as to amount or time of payment"; but it did not restrict further its previous announcement. So, here, we have an investment survivorship fund which, in the language of the Supreme Court, "is set aside, reserved, as a fund with which to mature or liquidate either by payment or reinsurance * * * future unaccrued and contingent claims." It follows that if this definition of "reserve" is followed, then the fund which provides against future contingent claims of an unknown class of survivors for unknown amounts is a legitimate part of the "reserves" which Congress had in mind.

We prefer to believe that all life insurance in its essential attributes is not a mere gambling contract, against the contingent stake of which reserves are maintained, but rather an investment program under the terms of which "The members pay premiums which when invested would, if the member lived exactly the average life, produce the sum agreed to be paid. Those who do not reach the expected age gain, those who exceed the age lose, but in the long run there cannot be either gain or loss. The policy-holder takes his chances of being a gainer or loser, but the fundamental idea is investment." Eckersley v. Federal L. Insur. Co., 2 OntWN 1274, 19 OntWR 507, 508. Another expression of the same idea is found in 37 C. J. 360, as follows:

"Life insurance is not a means of raising wealth, but in its most usual form is simply a mode of putting by money for savings, and in this sense is an investment of money."

And this is the view quite generally adopted in this country, a typical statement being that in Logan v. Fidelity, etc. Ins. Co., 146 Mo. 114; 47 S. W. 948, reading thus:

"The mere addition of one or more features or elements in a contract of insurance on life, that may serve to give the contract or policy a particular designation in the business or insurance world, will not in the least divest the contract or policy of its chief character, of insurance on life, or make the contract other than life insurance."

51 Life insurance today is not limited to policies for the payment of losses in case of death. Thus we have endowment insurance, the validity of which has long been recognized (Briggs v. McCullough, 36 Calif. 542); and in some jurisdictions, similar thereto, tontine or semi-tontine insurance policies the latter of which the present policy is an example (37 Corpus Juris 363; Gourley v. Northwestern Nat. Life Ins. Co., 94 Okla, 46; Uhlam v. N. Y. Life Ins. Co., 109 N. Y. 421). This class of insurance, which includes a provision for the payment of a specific sum upon death and in addition provisions for payment of accumulated funds upon survivorship of the tontine period, is not essentially different from endowment insurance. The variance is one of degree only. That the amount payable under the endowment plan will be paid is certain at all times, but under the tontine plan, that event is contingent upon survivorship. That contracts of endowment or tontine character, where recognized by statute, are properly insurance contracts is apparent from the decisions. The enlargement of the term, life insurance, is dwelt upon in Briggs v. McCullough, 36 Calif. 542, where the Court says that the covenant to pay a sum at the expiration of a certain period does not divest the contract of its character of life insurance. To the same effect holdings concerning endowment provisions are, Endowment and Benevolent Association v. State, 35 Kansas 253; Rothschild v. New York Life Insurance Co., 97 Ill. App. 547; Townsend v. Equitable Life Society, 263 Ill. 432.

The liability under all policies, until it is determined to whom the payments are to be made and in what sum they shall be made, is contingent. Thus in Cooley's Briefs on Insurance (2nd. Ed. 1927) it is said:

"Until the expiration of the tontine period, the liability of the company is contingent. (Avery v. Equitable Life Insur. Soc., 117 N. Y. 459, 23 N. E. 3). On the expiration of the period, the relation of debtor and creditor arises."

In Avery v. Equitable Life Assurance Society, 117 N. Y. 451, the Court said:

"The character of such policies is described * * * as involving the amount of the fund, out of which the dividend shall be paid to the surviving holder, in uncertainty, and, hence, creating a liability on the part of the company to him under such a
52 policy, which was necessarily contingent and could only be determined when, at the end of the dividend period, the aggregate of the fund from accretions, interest, etc., could be ascertained for division among the survivors."

The Supreme Court in Duffy v. Mutual Benefit Co., 272 U. S. 613, said:

"Until the maturity of a policy, the policyholder is simply a member of the corporation, with no present enforceable right against the assets. Upon the maturity of the policy he becomes a creditor with an enforceable right. Then for the first time there is an indebtedness."

In the Inter-Mountain case the Court found that the holders had become creditors, all coupons having matured, and that there was a matured obligation and indebtedness. This position was entirely consistent with that of the Court in its previous holdings in McCoach v. Insurance Co., 244 U. S. 585 and other cases, wherein it held reserves against matured unpaid losses not within the meaning of regular reserves. The basis of the prior opinions was the fact that the loss had occurred, the policy matured and the indebtedness thereon ripened into maturity. There was no longer any contingency, but a presently existing liability—an indebtedness no longer within the protection of regular reserves for contingent liabilities.

We conclude that the funds in the present instance were a special reserve, under a proper insurance contract, intended for the protection of contingent liabilities and within the meaning of reserves of life insurance companies as intended by Congress and as defined by the Supreme Court.

Accordingly the decision of the Board of Tax Appeals is Affirmed.

53. In United States Circuit Court of Appeals

5469

COMMISSIONER OF INTERNAL REVENUE

vs.

ILLINOIS LIFE INSURANCE COMPANY

Petition for Review of Decision of the United States Board of Tax Appeals

Judgment

Nov. 26, 1935

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof; It is now here ordered and adjudged by this court that the decision entered in this cause on August 30, 1934, by the United States Board of Tax Appeals, be, and the same is hereby affirmed.

Recital as to petition for rehearing and answer thereto

And afterwards, to wit: On the sixteenth day of December 1935, there was filed in the office of the Clerk of this court a petition for rehearing, which said petition for rehearing is not copied here.

And afterwards, to wit: On the twenty-sixth day of December 1935, there was filed in the office of the Clerk of this court an answer to the petition for rehearing, which said answer to the petition for rehearing is not copied here.

53 In United States Circuit Court of Appeals

Title omitted

Order denying petition for rehearing

Jan. 9, 1936

It is ordered by the court that the petition for a rehearing in this cause be, and the same is hereby denied.

Clerk's certificate to foregoing transcript omitted in printing.

56 Supreme Court of the United States

Order allowing certiorari

Filed May 18, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File No. 40457. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 27. Guy T. Helvering, Commissioner of Internal Revenue, petitioner, *vs.* Illinois Life Insurance Company. Petition for a writ of certiorari and exhibit thereto. Filed April 7, 1936. Term No. 27 O. T. 1936.